

1 Amend 2 Cal. Code Regs. section 18703.3 as follows:

2 **§18703.3. Economic Interest, Defined: Source of Income.**

3 (a) A public official has an economic interest in any person from whom he~~/~~or she has
4 received income, including commission income and incentive compensation as defined in this
5 regulation, aggregating five hundred dollars (\$500) within 12 months prior to the time when the
6 relevant governmental decision is made. For purposes of ~~the Political Reform Act~~ Government
7 Code sections 87100 and 87103(c), a public official's income includes income which has been
8 promised to the public official but not yet received by him or her, if he or she has a legally
9 enforceable right to the promised income.

10 (b) Former employers. Source of income, as used in Government Code section 87103(c)
11 and this section, shall not include a former employer if: All income from the employer was
12 received by or accrued to the public official prior to the time he or she became a public official;
13 the income was received in the normal course of the previous employment; and there was no
14 expectation by the public official at the time he or she assumed office of renewed employment
15 with the former employer.

16 (c) Sources of Commission Income to Brokers, Agents and Salespersons

17 ~~(1) This subsection contains the disclosure and disqualification requirements for any~~
18 ~~public official who receives commission income for services rendered as an insurance broker or~~
19 ~~agent, a real estate broker or agent, a travel agent or salesperson, a stockbroker or a retail or~~
20 ~~wholesale salesperson.~~

21 ~~(2)~~ (1) "Commission income" means gross payments received by a public official as a

1 result of services rendered as a broker, agent, or other salesperson for a specific sale or similar
2 transaction. Commission income is received when it is paid or credited.

3 (32) The sources of commission income in a specific sale or similar transaction include
4 for each of the following:

5 (A) An insurance broker or agent:

6 (i) The insurance company providing the policy;

7 (ii) The person purchasing the policy; and

8 (iii) The brokerage firm, agency, company, or other business entity through which the
9 broker or agent conducts business.

10 (B) A real estate broker:

11 (i) The person the broker represents in the transaction;

12 (ii) If the broker receives a commission from a transaction conducted by an agent
13 working under the broker's auspices, the person represented by the agent;

14 (iii) Any brokerage business entity through which the broker conducts business; and

15 (iv) Any person who receives a finder's or other referral fee for referring a party to the
16 transaction to the broker, or who makes a referral pursuant to a contract with the broker.

17 (C) A real estate agent:

18 (i) The broker and brokerage business entity under whose auspices the agent works;

19 (ii) The person the agent represents in the transaction; and

20 (iii) Any person who receives a finder's or other referral fee for referring a party to the
21 transaction to the broker, or who makes a referral pursuant to a contract with the broker.

1 (D) A travel agent or salesperson:

2 (i) The airline, hotel, tour operator or other person who provided travel services or
3 accommodations in the transaction;

4 (ii) The person who purchases or has a contract for travel services or accommodations
5 through the agent or salesperson; and

6 (iii) The person, travel agent, company, travel agency or other business entity for which
7 the agent or salesperson is an agent.

8 (E) A stockbroker:

9 (i) The brokerage business entity through which the broker conducts business; and

10 (ii) The person who trades the stocks, bonds, securities or other investments through the
11 stockbroker.

12 (F) A retail or wholesale salesperson:

13 (i) The person, store or other business entity which provides the salesperson with the
14 product or service to sell and for which the salesperson acts as a representative in the transaction;
15 and

16 (ii) The person who purchases the product or service.

17 ~~(4)~~(3) For purposes of determining whether disqualification is required under the
18 provisions of Government Code sections 87100 and 87103(c), the full gross value of any
19 commission income for a specific sale or similar transaction shall be attributed to each source of
20 income in that sale or transaction.

21 ~~(5) For purposes of disclosure under section 87207 or under a conflict of interest code~~

1 ~~adopted pursuant to section 87300, a public official who receives commission income on a~~
2 ~~regular basis is a business entity. The full gross value of any commission income for a specific~~
3 ~~sale or similar transaction shall be attributed to each source of income in that sale or transaction.~~
4 ~~The official shall report commission income as follows:~~

5 ~~(A) On the income schedule, the total amount of commission income received during the~~
6 ~~period covered by the statement, if it exceeds \$500. The source of the income shall be listed as~~
7 ~~the official if he or she is self-employed. If the official conducts business through a firm or other~~
8 ~~business entity, the source of income shall be listed as the firm or other business entity.~~

9 ~~(B) On the income to business entities schedule, the name of any source of gross~~
10 ~~commission income (other than one listed on the income schedule) of \$10,000 or more during~~
11 ~~the period covered by the statement.~~

12 (d) Sources of Incentive Compensation. "Incentive compensation" means income
13 received by an official who is an employee, over and above salary, which is ongoing and/or
14 cumulative as sales or purchases of goods or services accumulate, and which is calculated by a
15 predetermined formula set by his or her employer and which correlates to the conduct of the
16 purchaser in direct response to the effort of the official. Incentive compensation does not
17 include: salary; commission income; bonuses, the amount of which are based solely on merit,
18 performance measured against a preset standard or goal, or hours worked over and above a
19 predetermined minimum; and such executive incentive plans as may be based on company
20 performance, but where the formula for determining the amount of the executive's incentive
21 income does not include a correlation between that amount and increased profits derived from

1 increased business with specific and identifiable clients or customers of the company. Incentive
2 compensation also does not include payments for personal services which are not marketing or
3 sales.

4 The purchaser is a source of income to the official if:

5 (1) The official's employment responsibilities include directing sales or marketing
6 activity toward the purchaser;

7 (2) There is direct contact between the official and the purchaser intended by the official
8 to generate sales or business; and

9 (3) There is a direct relationship between the purchasing activity of the purchaser and the
10 amount of the incentive compensation received by the official.

11 COMMENT: For further discussion of incentive compensation, see *Peninsula Health Care*
12 *District v. Fair Political Practices Commission*, Sacramento County Superior Court, Case No.
13 02CS01766, and *In re Hanco*, O-02-088 (August 9, 2002).

14 NOTE: Authority cited: Section 83112, Government Code.
15 Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

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